

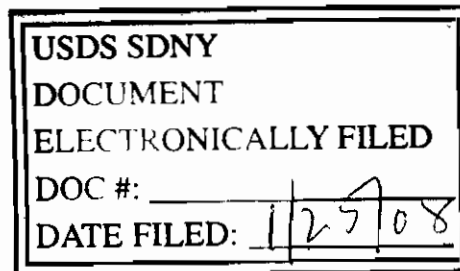
JAN 23 2008

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January 25, 2008



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Honorable Harold Baer, Jr.
 United States District Judge
 United States District Court for the Southern District of New York
 500 Pearl St., Room 2230
 New York, NY 10007

Re: Fei v. West LB AG, 07 Civ. 8785 (HB)

Dear Judge Baer:

We represent Plaintiff Philip Fei and the putative class in the above-referenced matter. We write to request leave of court pursuant to Federal Rule of Civil Procedure 15(a) to file an amended complaint to add retaliation claims under the Fair Labor Standards Act, 29 U.S.C. § 215(3), and the New York Labor Law § 215. On January 23, 2008, we sent Defendant a letter requesting Defendant's consent. This morning, we sent Defendant a copy of the amended complaint. We are currently awaiting Defendant's response.

In response to Plaintiff's complaint, Defendant filed counterclaims against him for breach of the Computer Fraud and Abuse Act of 1986 and breach of fiduciary duty and duty of loyalty. On January 11, 2008, Plaintiff filed a Motion to Dismiss the Counterclaims because they are frivolous and retaliatory. Plaintiff now seeks the Court's permission to amend his complaint to add retaliation claims.

As discussed in greater detail in Plaintiff's Memorandum of Law in Support of Plaintiff's Motion to Dismiss Counterclaims, the counterclaims are facially frivolous, and, therefore, can

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only be retaliatory in aim. Filing such frivolous counterclaims is a common form of retaliation against workers who seek to enforce their rights to be paid according to the law. *See, e.g., Jacques v. DiMarzio, Inc.*, 216 F. Supp. 2d 139, 141-43 (E.D.N.Y. 2002).

In short, Defendant alleges that Mr. Fei transmitted and copied company documents in violation of company policies and then used them for his own benefit. Yet, when asked during a 30(b)(b) deposition on the counterclaims how Mr. Fei allegedly used this confidential information for his own benefit, WestLB's 30(b)(6) witness only testified that Mr. Fei used the information "to bring this action against WestLB." See Exhibit A. WestLB's 30(b)(6) witness could not identify *any* way in which Mr. Fei allegedly harmed WestLB.

In light of this deposition testimony, as well as the close proximity in timing between Mr. Fei's filing of the instance complaint and Defendant suing him in response, we believe that Mr. Fei readily meets the lenient standard under Federal Rule of Civil Procedure 15(a). Moreover, Defendant would not be prejudiced by amending the complaint at this early stage of the litigation. Accordingly, we respectfully request that the Court grant Plaintiff permission to file an amended complaint. In the alternative, we ask the Court permission to file a motion to seek leave to file an amended complaint today in accordance with the Court's Pre-Trial Scheduling Order.

Thank you in advance for your attention to this matter.


Very truly yours,


Linda A. Neilan

Enclosure

cc: Vilia B. Hayes, Esq. (via facsimile & U.S. mail)
Ned H. Bassen, Esq. (via facsimile & U.S. mail)

*I hereby deny amendments to
complaints and while this may well be
concerned I will grant the motion subject
to a valid objection in accordance w/ the FRCP
filed w/ a ruling of the date hereof.*


Harold Baer, Jr., U.S.D.J.
1/25/08

Endorsement:

I rarely deny amendments to complaints and while this may well be ill conceived I will grant the motion subject to a valid objection in accordance with the FRCP filed within 10 days of the date hereof.